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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of themselves and
all others similarly situated.

Case No. 4:20-cv-03664-YGR-SVK

Plaintiffs.

GOOGLE LLC'S ADMINISTRATIVE MOTION TO SEAL PORTIONS OF GOOGLE LLC'S OBJECTIONS TO SPECIAL MASTER'S REPORT AND RECOMMENDATION ON REFERRED DISCOVERY ISSUES (PRESERVATION PLAN)

VS.

Judge: Hon. Susan van Keulen, USMJ

GOOGLE LLC,
Defendant

Defendant

Case No. 4:20-cv-03664-YGR-SVK

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”)
 3 respectfully seeks to seal certain portions of Google’s Objections to Special Master’s Report and
 4 Recommendation on Referred Discovery Issues (Preservation Plan) (“Google’s Objections”), which
 5 contains non-public, highly sensitive and confidential business information that could affect
 6 Google’s competitive standing and may expose Google to increased security risks if publicly
 7 disclosed, including various types of Google’s internal projects, data signals, and logs and their
 8 proprietary functionalities. This information is highly confidential and should be protected. The
 9 Court previously granted Google’s motions to seal the same or substantively similar information it
 10 seeks to seal now, including in Dkt. Nos. 143, 152, 160, 172, 174, 183, 190, 197, 226, 238, 240,
 11 276, 285, 286, 306, 320, 330, 341, 350, 380, 420, 540.

12 This Administrative Motion pertains for the following information contained in Google’s
 13 Objections:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Google’s Objections to Special Master’s Report and Recommendation on Referred Discovery Issues (Preservation Plan)	Portions Highlighted in Yellow at: Pages: 3:2-4, 3:7-12, 3:14-15, 4:1-9, 4:13-14, 4:18-19, 5:4-5, 5:11-13, 5:16-17, 6:2-3, 6:8-9, 6:13-14, 7:2-3, 7:6-7, 7:11-12, 7:16-17, 8:1-2, 8:6-7, 8:11-12, 9:1, 9:5-6, 9:9-10, 9:14-16, 10:1, 10:8-10, 10:13-14, 10:17-19; 11:3-14, 11:16, 11:18-19, 12:1-4, 12:7, 12:11-14, 13:1-2, 13:7-8, 13:14-16, 14:1, 14:5-15	Google

21 **II. LEGAL STANDARD**

23 A party seeking to seal material must “establish[] that the document, or portions thereof, are
 24 privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is
 25 “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing
 26 only of sealable material.” *Id.*

27 In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a
 28 showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty.*

1 *of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information
 2 in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the
 3 lower standard with respect to non-dispositive motions is that “the public has less of a need for
 4 access to court records attached only to non-dispositive motions because these documents are often
 5 unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he
 6 public policies that support the right of access to dispositive motions, and related materials, do not
 7 apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM,*
 8 *LLC v. McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-
 9 dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under
 10 the “good cause” standard, courts will seal statements reporting on a company’s users, sales,
 11 investments, or other information that is ordinarily kept secret for competitive purposes. *See*
 12 *Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride*
 13 *Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting
 14 motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under
 15 “good cause” standard) (van Keulen, J.). Although the materials that Google seeks to seal here
 16 easily meet the higher “compelling reasons” standard, the Court need only consider whether these
 17 materials meet the lower “good cause” standard.

18 III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED

19 Courts have repeatedly found it appropriate to seal documents that contain “business
 20 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*,
 21 435 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 22 “contain[] confidential information about the operation of [the party’s] products and that public
 23 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of*
 24 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 25 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 26 standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at
 27 *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 28 standard where that information could be used to the company’s competitive disadvantage”)

1 (citation omitted). Courts in this district have also determined that motions to seal may be granted
 2 as to potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015
 3 WL 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party]
 4 ha[s] not shown that the substance of the information . . . amounts to a trade secret”).

5 Here, Google’s Objections comprises confidential and proprietary information regarding
 6 highly sensitive features of Google’s internal systems and operations that Google does not share
 7 publicly. Specifically, this information provides details related to the various types of data sources
 8 which include information related to Google’s internal projects, data signals, and logs and their
 9 proprietary functionalities. Such information reveals Google’s internal strategies, system designs,
 10 and business practices for operating and maintaining many of its important services while complying
 11 with its legal and privacy obligations.

12 Public disclosure of the above-listed information would harm Google’s competitive standing
 13 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 14 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper
 15 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
 16 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
 17 sensitive business information related to Google’s processes and policies to ensure the integrity and
 18 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
 19 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
 20 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
 21 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
 22 motion to seal as to “internal research results that disclose statistical coding that is not publically
 23 available”).

24 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 25 compromise Google’s data sources, including data logs, internal data structures, and internal
 26 identifier systems. Google would be placed at an increased risk of cyber security threats. *See, e.g.,*
 27 *In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing
 28 “material concern[ing] how users’ interactions with the Gmail system affects how messages are

1 transmitted” because if made public, it “could lead to a breach in the security of the Gmail system”).
 2 The security threat is an additional reason for this Court to seal the identified information.

3 The information Google seeks to redact, including the various types of data sources which
 4 include information related to Google’s internal projects, data signals, and logs and their proprietary
 5 functionalities, is the minimal amount of information needed to protect its internal systems and
 6 operations from being exposed to not only its competitors but also to nefarious actors who may
 7 improperly seek access to and disrupt these systems and operations. The “good cause” rather than
 8 the “compelling reasons” standard should apply but under either standard, Google’s sealing request
 9 is warranted.

10 **IV. CONCLUSION**

11 For the foregoing reasons, the Court should seal the identified portions of Google’s
 12 Objections.

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 16 SULLIVAN, LLP

17 By _____ */s/ Andrew H. Schapiro*

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